

200852033



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Uniform Issue List: 408.03-00

SEP 30 2008

TEPRAT3

Legend:

Taxpayer A =

IRA X =

Account Z =

Account T =

Amount U =

Company B =

Company C =

Financial Representative S =

Date 1 =

Date 2 =

Month 1 =

Dear :

This is in response to your request dated November 1, 2007, as supplemented by correspondence dated January 2, 2008, January 28, 2008, February 1, 2008, February 28, 2008, and March 24, 2008, in which you request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the "Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

Taxpayer A, age 65, asserts that on Date 1 he received a distribution from IRA X of Amount U, and that Taxpayer A's failure to accomplish a rollover of Amount U within the 60-day period prescribed by section 408(d)(3) was due to a failure of Company C to follow the instructions of Taxpayer A which led to Amount U being placed into Account T, a non-IRA account, in violation of Taxpayer A's instructions. Taxpayer A further represents that Amount U has not been used for any other purpose and has remained continuously in Account T since Date 1.

Taxpayer A, age 65, maintained IRA X with Company B. IRA X was an individual retirement account as described in section 408(a) of the Code. Taxpayer A also maintained Account Z, a non-IRA account with Company B. During Month 1, Taxpayer A met with Financial Representative S of Company C to arrange a direct trustee-to-trustee transfer of Amount U from IRA X which he maintained at Company B to an individual retirement account to be maintained by Company C. Taxpayer A instructed Company C to transfer IRA X and Account Z from Company B to Company C in a direct custodian-to-custodian transfer, so that IRA X would be transferred to a Company C maintained individual retirement account, and his non-IRA account, Account Z, would be transferred to a Company C maintained non-IRA account.

On Date 1 Taxpayer A signed authorizations prepared by Representative S to accomplish this transaction. However, on Date 1, Company C, in error, transferred Amount U to Account T, a non-IRA account. Taxpayer A first learned of this error after the expiration of the 60-day rollover period during a conversation with Financial Representative S on Date 2, wherein, Financial Representative S admitted that Company C made the erroneous transfer of Amount U to a non-IRA account, and in addition, withheld disclosing this error to Taxpayer A because he had been trying to correct the error. Taxpayer A has submitted affidavits and other supporting documentation, which establishes that Company C's error prevented the rollover of Amount T within the 60-day period.

Based on the facts and representations, you request a ruling that the Internal Revenue Service waive the 60 day rollover requirement with respect to the transfer of Amount U contained in section 408(d)(3) of the Code in this instance.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in

gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines, and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if

(i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or

(ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error, (3) the use of the amount distributed (for example, in the case of payment by check,

whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and documentation submitted by Taxpayer A is consistent with Taxpayer A's assertion that Taxpayer A's failure to accomplish a rollover of Amount U within the 60-day period prescribed by section 408(d)(3) was due to a failure of Company C to follow the instructions of Taxpayer A which led to Amount U being placed into Account T, a non-IRA account, in violation of Taxpayer A's instructions.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount U from IRA X. Pursuant to this ruling letter, Taxpayer A is granted a period of 60 days measured from the date of the issuance of this letter ruling to make a rollover contribution of an amount equal to Amount U to an IRA (or IRAs) described in Code section 408(a). Provided all other requirements of Code section 408(d)(3), except the 60-day requirement, are met with respect to such IRA contribution, the contribution will be considered a rollover contribution within the meaning of Code section 408(d)(3).

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

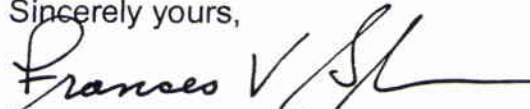
This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter ruling is sent to your authorized representative pursuant to the provisions of a Power of Attorney on file in this office.

If you wish to inquire about this ruling, please contact XXXXXX

Please address all correspondence to SE:T:EP:RA:T3.

Sincerely yours,



Frances V. Sloan, Manager
Employee Plans Technical Group 3

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose